

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**CASE NO.:**

JACK W. NICKLAUS,

Plaintiff,

v.

HOWARD P. MILSTEIN,  
ANDREW W. O'BRIEN, and  
NICKLAUS COMPANIES, LLC,

Defendants.

**DEFENDANTS', HOWARD P. MILSTEIN, ANDREW W. O'BRIEN AND NICKLAUS  
COMPANIES, LLC, NOTICE OF REMOVAL**

Defendants, HOWARD P. MILSTEIN ("Milstein"), ANDREW W. O'BRIEN ("O'Brien") and NICKLAUS COMPANIES, LLC ("NC, LLC") (collectively, the "Defendants"), by and through their undersigned counsel, and pursuant to 28 U.S.C. §§ 1331, 1441, 1446(b), and S.D. Fla. L.R. 7.2, hereby file this Notice of Removal to the United States District Court, Southern District of Florida, for the cause of action pending in the Circuit Court of the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, Case No.: 50-2023-CA-009653XXXXMB and styled *Jack W. Nicklaus v. Howard P. Milstein, Andrew W. O'Brien, and Nicklaus Companies, LLC* ("State Court Action"). As grounds in support of this Notice of Removal, the following is stated:

1. On April 21, 2023, Plaintiff, Jack W. Nicklaus ("Plaintiff") commenced this action by filing a Complaint to initiate the State Court Action ("Complaint").

**COLE, SCOTT & KISSANE, P.A.**

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2. In his Complaint, Plaintiff brings five counts against Milstein, O'Brien, and NC, LLC. Namely, Plaintiff asserts I) defamation alleging false statements relating to Mr. Nicklaus and the New Saudi Golf League, II) common law unfair competition for alleged false statements intended to impair competition, III) violation of Fla. Stat. § 540.08 for false endorsement, IV) violation of the federal Lanham Act 15 U.S.C. § 1125(a) for false statements intended to impair competition, and V) violation of the federal Lanham Act 15 U.S.C. § 1125(a) for false endorsement. *See*, Complaint, Counts I-V.

3. The Complaint was served on Milstein, O'Brien and NC, LLC on April 21, 2023. Therefore, this Notice of Removal is timely filed within the thirty-day statutory removal period pursuant to 28 U.S.C. § 1446(b). There has been no waiver by Milstein, O'Brien or NC, LLC of their rights to remove this action.

4. In accordance with S.D. Fla. L.R. 7.2 and 28 U.S.C. § 1446(a), true and legible copies of all pleadings and papers on file with the state court are attached as **Composite Exhibit 1**. These papers include Plaintiff's Complaint and service documents. Milstein, O'Brien and NC, LLC have not yet filed their response to Plaintiff's Complaint in the State Court Action. Milstein, O'Brien and NC, LLC are not aware of any other pending motions or briefs.

5. This action is removable under 28 U.S.C. § 1441 because it is a civil action over which this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. The requirements of 28 U.S.C. § 1331 have been met because in the Complaint, Plaintiff alleges multiple direct violations of the federal Lanham Act 15 U.S.C. § 1125(a) to which this Court has original jurisdiction.

6. Accordingly, this case is a civil action arising under the laws of the United States over which this Court has original jurisdiction, and therefore, is one which may be removed to this

Court pursuant to 28 U.S.C. § 1441(b). In addition, this Court may exercise supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

7. This action is pending in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida, therefore, venue for purposes of removal is proper in this Court pursuant to 28 U.S.C. §§ 1441(a) and 1446(a).

8. Prompt written notice of this Notice of Removal is being provided to Plaintiff and to the Clerk of Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida as required by 28 U.S.C. § 1446(d) and S.D. Fla. L.R. 7.2. A copy of the Notice of Filing is attached as **Exhibit 2**.

9. The undersigned counsel represents and is authorized to represent that Milstein, O'Brien and NC, LLC consent to the removal of this action. The undersigned counsel are Attorneys of Record for Milstein, O'Brien and NC, LLC and are authorized to act on behalf of Milstein, O'Brien and NC, LLC in seeking Removal of this cause to the United States District Court, Southern District of Florida. Further, the undersigned Counsel of Record are fully licensed attorneys in the State of Florida and are authorized to practice in the United States District Court, Southern District of Florida.

#### **FEDERAL QUESTION JURISDICTION**

10. 28 U.S.C. § 1331 instructs "[t]he district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

11. Accordingly, this Court has original jurisdiction over the claims brought in alleged violation of 15 U.S.C. § 1125(a).

12. Further, pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over the claims brought for defamation, common law unfair competition, and alleged violations of Fla. Stat. § 540.08. Specifically, section 1367 provides that:

In any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

28 U.S.C. § 1367(a); *see also*, *Wyndham Vacation Ownership Inc. v. Bonds*, 2021 WL 4948147, at \*2 (M.D. Fla. July 27, 2021) (“Because the state law claims arise out of the same controversy as the Lanham Act claim, I also respectfully recommend the Court to find it has supplemental jurisdiction over the state law claims.”).

13. Plaintiff’s state law claims arise out of the same controversy as the claims over which this Court has original jurisdiction. Plaintiff alleges that Milstein, O’Brien and NC, LLC violated the Lanham Act by making false statements intended to impair competition and through false endorsement for using Plaintiff’s name, image and likeness. *See*, Complaint, Counts IV-V. The statements which form the basis of Plaintiff’s competition claim under the Lanham Act and which arise out of the partnership dispute at issue in the State Court Action, also form the basis of Plaintiff’s defamation and common law unfair competition claims, which also arise from the same partnership dispute. Similarly, the alleged use of Plaintiff’s name, image and likeness form the basis of Plaintiff’s Lanham Act claim for false endorsement and violation of Fla. Stat. § 540.08 for false endorsement.

14. Indeed, Plaintiff’s claim for alleged violations of Fla. Stat. § 540.08 hinges on the determination of whether Milstein, O’Brien and NC, LLC possess the right to utilize Plaintiff’s name, image, and likeness in furtherance of certain commercial purposes, including golf course

design, golf equipment design, and marketing ventures. These claims coincide with Plaintiffs' false endorsement claim under the Lanham Act which seeks to attribute liability to Milstein, O'Brien and NC, LLC for the rightful use of Plaintiff's name, image, and likeness to market golf related products and services.

### **REMOVAL JURISDICTION**

15. This action is properly removed pursuant to 28 U.S.C. § § 1441 and 1446.

16. Under § 1441(a), "any civil action brought in a State court of which the district court of the United States has original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

17. Plaintiff filed this action in the Circuit Court of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida. The Southern District of Florida is the judicial district embracing Palm Beach County, Florida. This Court, therefore, is the proper district court to which this case should be removed. *See*, 28 U.S.C. § § 1441(a), 1446(b).

18. Pursuant to § 1446(b), "[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based . . . ." 28 U.S.C. § 1446(b).

19. The Complaint was served on Milstein, O'Brien and NC, LLC on April 21, 2023. Therefore, pursuant to 28 U.S.C. § 1446(b), this removal is timely because thirty days have not elapsed from the date of service of the Complaint.

20. Pursuant to § 1446(a), Milstein, O'Brien and NC, LLC are simultaneously filing with this Notice of Removal copies of all process, pleadings, and orders served on Defendants in this removed action. *See*, 28 U.S.C. § 1446(d).

21. Milstein, O'Brien and NC, LLC reserve the right to raise all defenses and objections in this action after the action is removed to this Court.

22. The allegations set forth in this Notice of Removal are true and accurate to the best of the knowledge and belief of the undersigned attorney.

23. Counsel for Milstein, O'Brien and NC, LLC has conferred with counsel for Plaintiff pertaining to this Notice of Removal, counsel for Plaintiff explained that they will review the Notice of Removal after it is filed and determine whether a motion to remand is appropriate.

24. Accompanying this Notice of Removal is a Civil Cover Sheet as well as the required filing fee.

**WHEREFORE**, Defendants, HOWARD P. MILSTEIN, ANDREW W. O'BRIEN and NICKLAUS COMPANIES, LLC, hereby give Notice of Removal and petition this Court for the entry of an Order removing this cause from the Circuit Court for the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida, to the United States District Court for the Southern District of Florida.

Dated: May 11, 2023

Respectfully submitted,  
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*Counsel for Defendants Howard P. Milstein,  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 11th day of May, 2023, a true and correct copy of the foregoing has been furnished by electronic filing with the Clerk of the court via CM/ECF, which will send notice of electronic filing to all counsel of record listed below, we further certify that we sent the foregoing document via email to all counsel of record listed below.

/s/ Justin B. Levine  
JUSTIN B. LEVINE  
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**SERVICE LIST**

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